

Senate Bill No. 1141

Passed the Senate August 31, 2006

Secretary of the Senate

Passed the Assembly August 30, 2006

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2006, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 63049.1 of, and to add Section 63049.55 to, the Government Code, relating to state funds.

LEGISLATIVE COUNSEL'S DIGEST

SB 1141, Committee on Budget and Fiscal Review. Tobacco assets: sales.

Under existing law, the Infrastructure and Economic Development Bank is authorized to sell for, and on behalf of, the state all or any portion of the state's tobacco assets, which are the tobacco lawsuit moneys required to be allocated to the state under the Master Settlement Agreement, to a special purpose trust to provide collateral and security for the issuance of bonds, as specified.

This bill would specify that the pledge of any of these assets, or any residual interests therein, shall have priority in accordance with its terms and shall not be subject to certain laws relating to secured transactions and the perfection of transfer of rights in certain actions and instruments. It would provide that the proceeds of the sale of any residual interests in the assets would be deposited in the Tobacco Asset Sales Revenue Fund, which would be created by the bill, for the purpose of maintaining a separate account for the investment of proceeds received from the sale of any residual interests in tobacco assets.

Existing law limits the amount of proceeds the state may receive from the sale of these assets to provide up to \$5,000,000,000 in bonds.

This bill would eliminate that limitation.

The people of the State of California do enact as follows:

SECTION 1. Section 63049.1 of the Government Code is amended to read:

63049.1. (a) Subject to subdivision (c) and subdivision (d), as applicable, the bank is hereby authorized to sell for, and on behalf of, the state, solely as its agent, all or any portion of the tobacco assets, or any residual interests therein, to a special

purpose trust which is hereby established as a not-for-profit corporation solely for that purpose and for the purposes necessarily incidental thereto, and to enter into one or more sales agreements with the special purpose trust as and on the terms it deems appropriate, which may include covenants of, and binding on, the state necessary to establish and maintain the security of the bonds and exemption of interest on the bonds from federal income taxation. The principal office of the special purpose trust shall be located in Sacramento County. The articles of incorporation of the special purpose trust shall be prepared and filed, on behalf of the state, with the Secretary of State by the bank, and the five voting members of the State Public Works Board shall serve ex officio as the directors of the special purpose trust. Directors of the special purpose trust shall not be subject to personal liability for carrying out the powers and duties conferred by this article. The special purpose trust shall be treated as a separate legal entity with its separate corporate purpose as described in this article, and the assets, liabilities, and funds of the special purpose trust shall be neither consolidated nor commingled with those of the bank or the State Public Works Board.

The special purpose trust is hereby authorized to issue bonds, including, but not limited to, refunding bonds, on the terms it shall determine, and do all things contemplated by, and authorized by, this division with respect to the bank, and enjoy all rights, privileges, and immunities the bank enjoys pursuant to this division, or as authorized by Section 5140 of the Corporations Code with respect to public benefit nonprofit corporations, or as necessary or appropriate in connection with the issuance of bonds, and may enter into agreements with any public or private entity and pledge the tobacco assets, or any residual interests therein, that it purchased as collateral and security for its bonds. The pledge of any of these assets and interests and of any revenues, reserves, and earnings pledged in connection therewith shall be valid and binding in accordance with its terms and have priority in accordance with its terms from the time the pledge is made and property so pledged shall immediately be subject to the lien of the pledge without the need for physical delivery, recordation, filing, or other further act. The pledge shall not be subject to Division 9 (commencing with

Section 9101) of the Commercial Code or Sections 954.5 and 955.1 of the Civil Code. The special purpose trust, and its assets and income, and bonds issued by the special purpose trust, and their transfer and the income therefrom, shall be exempt from all taxation by the state and by its political subdivisions.

(b) (1) In order to assist the special purpose trust in financing or refinancing the purchase of tobacco assets, or any residual interests therein, by enhancing the security of the bonds issued for that purpose, upon request by the Director of Finance, the bank may include in, or add to, the sales agreement with the special purpose trust a covenant, binding on the state, to the effect that the Governor shall each year request from the Legislature an appropriation line item in the annual Budget Act, in a manner described further in this subdivision, from the General Fund for allocation by the Department of Finance to the special purpose trust in an amount equal to the debt service and operating expenses scheduled, or, in the case of bonds bearing variable rates of interest, estimated, to become due during the next succeeding fiscal year on the bonds, including refunding bonds, issued by the special purpose trust to finance or refinance the purchase of tobacco assets, or any residual interests therein, pursuant to that sales agreement.

(2) The appropriation referred to in paragraph (1) may provide that it will have an initial zero funding amount, but shall contain provisions authorizing the Director of Finance to make allocations in augmentation of the appropriation, without further legislative approval, from the General Fund, up to the amount certified by the special purpose trust to be necessary to cover the difference, if negative, between the amount of tobacco assets received by the special purpose trust pursuant to the sales agreement by the end of April of any calendar year, plus any other amounts available in the debt service reserve fund or other fund held by the trustee for the bonds, less the amount of debt service on the bonds and operating expenses scheduled, or in the case of bonds bearing variable rates of interest, estimated, to become due during the next succeeding 12 months.

(3) Any amounts appropriated as provided in this subdivision shall be disbursed to the trustee for the bonds for the purpose of paying the debt service on the bonds and operating expenses specified in the certificate of the special purpose trust.

Notwithstanding any other provision of this article, the Legislature shall not be obligated by this subdivision or any covenant made in a sales agreement, or any other provision of law, to appropriate or otherwise make funds available to pay debt service on the bonds or operating expenses.

(c) Based upon the terms of the sale agreements and bonds as established by the special purpose trust pursuant to subdivision (a) or (b), tobacco assets, or any residual interests therein, may be sold pursuant to this article, whether at one time or from time-to-time. The net proceeds of sale of any tobacco assets by the bank shall be deposited in the General Fund, except that the proceeds from the sale of any residual interests therein shall be deposited in the Tobacco Asset Sales Revenue Fund established pursuant to Section 63049.55. The use and application of the proceeds of any sale of tobacco assets, or any residual interests therein, or bonds shall not in any way affect the legality or validity of that sale or those bonds.

(d) On or after January 1, 2007, no bonds issued by the special purpose trust to finance or refinance the purchase of any tobacco assets, or any residual interests therein, shall include any enhancement of security pursuant to subdivision (b), other than refunding bonds for the purpose of refinancing or refunding existing enhanced bonds previously issued.

SEC. 2. Section 63049.55 is added to the Government Code, to read:

63049.55. (a) The Tobacco Asset Sales Revenue Fund is hereby established in the State Treasury for the purpose of maintaining a separate account for the investment of proceeds received from the sale of any residual interests in tobacco assets and for the investment earnings on those proceeds.

(b) Pursuant to Article 4 (commencing with Section 16740) of Chapter 3 of Part 2 of Division 4 of Title 2, moneys in the fund may be transferred to the Surplus Money Investment Fund for investment, as long as that transfer does not jeopardize the tax-exempt status of the bonds.

(c) Upon direction by the Director of Finance, moneys in the fund shall be transferred to the General Fund.

(d) Pursuant to Section 16310, moneys in the fund may be borrowed for daily cashflow use by the General Fund.

Approved _____, 2006

Governor